

(3) The trustee has engaged in conduct that appears to be dishonest, deceitful, fraudulent, or criminal in nature; or

(4) The trustee appears to have engaged in other gross misconduct that is unbefitting his or her position as trustee or violates the trustee's duties.

(e) If the United States Trustee issues an interim directive, the trustee may seek a stay of the interim directive from the Director if the trustee has timely filed a request for review under paragraph (b) of this section.

(f) The trustee's written request for review shall fully describe why the trustee disagrees with the United States Trustee's decision, and shall be accompanied by all documents and materials that the trustee wants the Director to consider in reviewing the decision. The trustee shall send a copy of the request for review, and the accompanying documents and materials, to the United States Trustee by overnight courier, for delivery the next business day. The trustee may request that specific documents in the possession of the United States Trustee be transmitted to the Director for inclusion in the record.

(g) The United States Trustee shall have 15 calendar days from the date of the trustee's request for review to submit to the Director a written response regarding the matters raised in the trustee's request for review. The United States Trustee shall provide a copy of this response to the trustee. Both copies shall be sent by overnight courier, for delivery the next business day.

(h) The Director may seek additional information from any party in the manner and to the extent the Director deems appropriate.

(i) Unless the trustee and the United States Trustee agree to a longer period of time, the Director shall issue a written decision no later than 30 calendar days from the receipt of the United States Trustee's response to the trustee's request for review. That decision shall determine whether the United States Trustee's decision is supported by the record and the action is an appropriate exercise of the United States Trustee's discretion, and shall adopt, modify or reject the United States

Trustee's decision to suspend or terminate the assignment of future cases to the trustee. The Director's decision shall constitute final agency action.

(j) In reaching a determination, the Director may specify a person to act as a reviewing official. The reviewing official shall not be a person who was involved in the United States Trustee's decision or a Program employee who is located within the region of the United States Trustee who made the decision. The reviewing official's duties shall be specified by the Director on a case by case basis, and may include reviewing the record, obtaining additional information from the participants, providing the Director with written recommendations, or such other duties as the Director shall prescribe in a particular case.

(k) This rule does not authorize a trustee to seek review of any decision to increase the size of the chapter 7 panel or to appoint additional standing trustees in the district or region.

(l) A trustee who files a request for review shall bear his or her own costs and expenses, including counsel fees.

[62 FR 51750, Oct. 2, 1997]

**§ 58.7 Procedures for Completing Uniform Forms of Trustee Final Reports in Cases Filed Under Chapters 7, 12, and 13 of the Bankruptcy Code.**

(a) *UST Form 101–7–TFR, Chapter 7 Trustee's Final Report.* A chapter 7 trustee must complete UST Form 101–7–TFR final report (TFR) in preparation for closing an asset case. This report must be submitted to the United States Trustee after liquidating the estate's assets, but before making distribution to creditors, and before filing it with the United States Bankruptcy Court. The TFR must contain the trustee's certification, under penalty of perjury, that all assets have been liquidated or properly accounted for and that funds of the estate are available for distribution. Pursuant to 28 U.S.C. 589b(d), the TFR must also contain the following:

- (1) Summary of the trustee's case administration;
- (2) Copies of the estate's financial records;
- (3) List of allowed claims;

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(4) Fees and administrative expenses; and

(5) Proposed dividend distribution to creditors.

(b) *UST Form 101-7-NFR Chapter 7 Trustee's Notice of Trustee's Final Report.* After the TFR has been reviewed by the United States Trustee and filed with the United States Bankruptcy Court, if the net proceeds realized in an estate exceed the amounts specified in Fed. R. Bankr. P. 2002(f)(8), UST Form 101-7-NFR (NFR) must be sent to all creditors as the notice required under Fed. R. Bankr. P. 2002(f). The NFR must show the receipts, approved disbursements, and any balance identified on the TFR, as well as the information required in the TFR's Exhibit D. In addition, the NFR must identify the procedures for objecting to any fee application or to the TFR.

(c) *UST Form 101-7-TDR Chapter 7 Trustee's Final Account, Certification The Estate Has Been Fully Administered and Application of Trustee To Be Discharged.* After distributing all estate funds, a trustee must submit to the United States Trustee and file with the United States Bankruptcy Court the trustee's final account, UST Form 101-7-TDR (TDR). The TDR must contain the trustee's certification, under penalty of perjury, that the estate has been fully administered and the trustee's request to be discharged as trustee. Pursuant to 28 U.S.C. 589b(d), the TDR must also include the following:

(1) The length of time the case was pending;

(2) Assets abandoned;

(3) Assets exempted;

(4) Receipts and disbursements of the estate;

(5) Claims asserted;

(6) Claims allowed; and,

(7) Distributions to claimants and claims discharged without payment, in each case by appropriate category.

(d) *UST Form 101-7-NDR Chapter 7 Trustee's Report of No Distribution.* In cases where there is no distribution of funds the case trustee must submit to the United States Trustee and file with the United States Bankruptcy Court UST Form 101-7-NDR (NDR). The NDR must contain the trustee's certification that the estate has been fully administered, that the trustee has nei-

ther received nor disbursed any property or money on account of the estate, and that there is no property available for distribution over and above that exempted by law. In addition, the NDR must set forth the trustee's request to be discharged as trustee. Pursuant to 28 U.S.C. 589b(d), the NDR must also include the following information:

(1) The length of time the case was pending;

(2) Assets abandoned;

(3) Assets exempted;

(4) Claims asserted;

(5) Claims scheduled; and,

(6) claims scheduled to be discharged without payment.

(e) *UST Form 101-12-FR-S, Chapter 12 Standing Trustee's Final Report and Account and UST Form 101-13-FR-S, Chapter 13 Standing Trustee's Final Report and Account.* After the final distribution to creditors in a chapter 12 or 13 case in which a standing trustee has been appointed, a trustee must submit to the United States Trustee and file with the United States Bankruptcy Court either UST Form 101-12-FR-S for chapter 12 cases or UST Form 101-13-FR-S for chapter 13 cases, which are the trustee's final report and account. In these forms, a trustee must include a certification that the estate has been fully administered if not converted to another chapter and a request to be discharged as trustee. Pursuant to 28 U.S.C. 589b(d), these forms must also include the following information:

(1) The length of time the case was pending;

(2) Assets abandoned;

(3) Assets exempted;

(4) Receipts and disbursements of the estate;

(5) Expenses of administration, including for use under section 707(b), actual costs of administering cases under chapter 12 or 13 (as applicable) of title 11;

(6) Claims asserted;

(7) Claims allowed;

(8) Distributions to claimants and claims discharged without payment, in each case by appropriate category;

(9) Date of confirmation of the plan;

(10) Date of each modification thereto; and,

(11) Defaults by the debtor in performance under the plan.

(f) *UST Form 101–12–FR–C, Chapter 12 Case Trustee’s Final Report and Account, and UST Form 101–13–FR–C, Chapter 13 Case Trustee’s Final Report and Account.* After the final distribution to creditors in a chapter 12 or 13 case in which a case trustee has been appointed, the trustee must submit to the United States Trustee and file with the United States Bankruptcy Court either UST Form 101–12–FR–C for chapter 12 cases, or UST Form 101–13–FR–C for chapter 13 cases, which are the trustee’s final report and account. In these forms, a trustee must include a certification, submitted under penalty of perjury, that the estate has been fully administered if not converted to another chapter and the trustee’s request to be discharged from further duties as trustee. Pursuant to 28 U.S.C. 589b(d), these forms must also include the following information:

- (1) The length of time the case was pending;
- (2) Assets abandoned;
- (3) Assets exempted;
- (4) Receipts and disbursements of the estate;
- (5) Expenses of administration, including for use under section 707(b), actual costs of administering cases under chapter 12 or 13 (as applicable) of title 11;
- (6) Claims asserted;
- (7) Claims allowed;
- (8) Distributions to claimants and claims discharged without payment, in each case by appropriate category;
- (9) Date of confirmation of the plan;
- (10) Date of each modification thereto; and,
- (11) defaults by the debtor in performance under the plan.

(g) *Mandatory Usage of Uniform Forms.* The Uniform Forms associated with this rule must be utilized by trustees when completing their final reports and final accounts. All trustees serving in districts where a United States Trustee is serving must use the Uniform Forms in the administration of their cases, in the same manner, and with the same content, as set forth in this rule:

- (1) All Uniform Forms may be electronically or mechanically reproduced so long as all the content and the form remain consistent with the Uniform

Forms as they are posted on EOUST’s Web site;

- (2) The Uniform Forms shall be filed via the United States Bankruptcy Courts Case Management/Electronic Case Filing System (CM/ECF) as a “smart form” meaning the forms are data enabled, unless the court offers an automated process that has been approved by EOUST, such as the virtual NDR event through CM/ECF.

[73 FR 58444, Oct. 7, 2008]

**§ 58.11 Procedures governing administrative review of a United States Trustee’s decision to deny a Chapter 12 or Chapter 13 standing Trustee’s claim of actual, necessary expenses.**

(a) The following definitions apply to this section. These terms shall have these meanings:

- (1) The term *claim of actual, necessary expenses* means the request by a chapter 12 or chapter 13 standing trustee for the United States Trustee’s approval of the trustee’s projected expenses for each fiscal year budget, or for an amendment to the current budget when an increase in an individual expense line item is greater than both 10% of the budgeted amount and \$5,000.00. Expenses for certain items require prior United States Trustee approval regardless of amount;

(2) The term *director* means the person designated or acting as the Director of the Executive Office for United States Trustees;

(3) The term *final decision* means the written determination issued by the Director based upon the review of the United States Trustee’s decision to deny all or part of a trustee’s claim of actual, necessary expenses;

(4) The term *notice* means the written communication from the United States Trustee to a trustee that the trustee’s claim of actual, necessary expenses has been denied in whole or in part;

(5) The term *request for review* means the written communication from a trustee to the Director seeking review of the United States Trustee’s decision to deny, in whole or in part, the trustee’s claim of actual, necessary expenses;

(6) The term *trustee* means an individual appointed by the United States